

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DARYL SHARP,

Plaintiff,

v.

Case No: 8:23-cv-1409-JLB-SPF

TIMOTHY DOLAN,

Defendant.

ORDER

The Magistrate Judge filed a Report and Recommendation (“R&R”) in this matter on July 26, 2023 (Doc. 11) recommending that Plaintiff Daryl Sharp’s Motion to Proceed in Forma Pauperis (Doc. 2) be DENIED and that Mr. Barnette’s Complaint (Doc. 1) be DISMISSED with prejudice. Specifically, the Magistrate Judge recommends that the Court not authorize Mr. Sharp to file his lawsuit without prepayment of fees because Mr. Sharp’s action “is frivolous or malicious” and “fails to state a claim on which relief may be granted,” thereby permitting dismissal under 28 U.S.C. § 1915(e)(2)(B)(i)–(ii). (Doc. 11 at 2–4). The Magistrate Judge recommends that Mr. Sharp’s Complaint be dismissed with prejudice because “given Plaintiff’s allegations and history of filing similar complaints, Plaintiff could not state a valid, nonfrivolous claim for relief that is plausible on its face if given

the opportunity to amend. An amendment of the complaint would prove futile.”
(*Id.* at 5). No objections have been filed, and the time to do so has expired.¹

A district judge may accept, reject, or modify a Magistrate Judge’s Report and Recommendation. 28 U.S.C. § 636(b)(1). The factual findings in a Report and Recommendation need not be reviewed de novo in the absence of an objection, but legal conclusions are always reviewed de novo. *Id.*; *Cooper-Houston v. Southern Ry. Co.*, 37 F.3d 603, 604 (11th Cir. 1994); *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir. 1993).

After an independent review of the record—and noting that no objections have been filed—the Court agrees with the well-reasoned Report and Recommendation and DENIES Mr. Sharp’s Motion to Proceed In Forma Pauperis and DISMISSES with prejudice Mr. Sharp’s Complaint. Consistent with the Magistrate Judge’s recommendation, the Court will not permit Mr. Sharp to amend his Complaint because “[a] district court need not . . . allow an amendment . . . where amendment would be futile.” *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001). As the Eleventh Circuit has explained, where a plaintiff fails “to allege *any* fact that could potentially lead to liability under any of the statutes on which [he] relies, the district court d[oes] not abuse its discretion in finding [the plaintiff’s]

¹ Under 28 U.S.C. § 636(b)(1)(C), parties have fourteen days from the date they are served a copy of the Magistrate Judge’s Report to file written objections to the Report’s proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. Under 28 U.S.C. 636(b)(1), a party’s failure to object to the Report’s proposed findings and recommendations waives that party’s right to challenge on appeal the district court’s order adopting the Report’s unobjected-to factual findings and legal conclusions.

complaint frivolous and d[oes] not err in finding that it failed to state a claim.”


Broner v. Washington Mut. Bank, FA, 258 F. App’x 254, 256–57 (11th Cir. 2007)

(emphasis in original).

Accordingly, it is **ORDERED**:

1. The Report and Recommendation (Doc. 11) is **ADOPTED**.
2. Mr. Sharp’s Motion to Proceed In Forma Pauperis (Doc. 2) is **DENIED**.
3. Mr. Sharp’s Complaint (Doc. 1) is **DISMISSED** with prejudice.
4. The Clerk of Court is **DIRECTED** to terminate all pending deadlines and close the case.

ORDERED at Tampa, Florida on August 11, 2023.



JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE